



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/341,241	09/14/1999	CHRISTINE DUPUIS	2350-73	4909
7590 10/06/2004				
NIXON & VANDERHYE 1100 NORTH GLEBE ROAD 8TH FLOOR ARLINGTON, VA 222014714				
EXAMINER SHARAREH, SHAHNAM J				
ART UNIT			PAPER NUMBER	
1617				

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/341,241

Applicant(s)

DUPUIS ET AL.

Examiner

Shahnam Sharareh

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/6/2004, 5/3/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-18 and 20-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-18, 20-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1617

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 6, 2004 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 15-18, 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almaric et al US Patent 5,670,471.

Almaric teaches compositions and methods of preparing such compositions comprising Dodecanol at 0.3% (a fatty alcohol), Tetradecanol at 1.65% (a fatty alcohol), Dodecylpolyglycosides at 14.4% etc...(see col 6). Almaric further uses 4% of said concentrates in his final mixture in combination with Acrysol 22 within about 2-3 wt% of the total composition (Acrysol is a (meth)acrylic acid/ ethyl acrylate/ polyoxyethyleneated stearyl methacrylate copolymer which reads on instant element (a) see col 5, line 54, col 12, lines 61-67), and a conditioning agent. Almaric also teaches final compositions wherein the non-ionic surfactant alkylpolyglucoside (APG) falls within ranges of 3-4% (examples 7-11). In fact, Almaric claims preparing such final compositions wherein the 1-15% by weight of such concentrate is used (claims 26-27,31). Almaric does not teach the instant non-ionic type surfactants in proportion of less than 1% by weight with respect to the total weight of the composition.

However, it is well-established that merely selecting proportions and ranges is not patentable absent a showing of criticality. *In re Becket*, 33 USPQ. 33 (CCPA 1937). *In re Russell*, 169 USPQ. 426 (CCPA 1971). Accordingly, absence the showing of criticality, it would have been *prima facie* obvious to optimize the concentration of the

Art Unit: 1617

non-ionic surfactants and its ratio to the non-crosslinked copolymers of Almeric by routine experimentation, and employ lower amounts of such surfactants, because the ordinary artisan would have had a reasonable expectation of success in improving beneficial characteristics of the his compositions such as skin tolerance and plasticity.

Response to Arguments

Applicant's arguments filed July 07, 2004, May 03, 2004 have been fully considered but they are not persuasive.

Applicant first argues that the instant compositions are directed to aqueous gel type compositions free from foaming when applied. (see arguments at page 2). In response Examiner states that applicant argues unclaimed limitations which are not commensurate with the scope of the claims.

Applicant also argues that the compositions of Amalric is not stable all the time. (arguments at page 3). Such line of argument is not commensurate with the scope of the claim as stability over a period of time is not at issue in the instant claims. Further the presented comparative tests are not within the scope of the pending claims and do not show a trend or provide adequate number of comparative samples. In addition, the statement is not presented in a proper declaration format. Accordingly, the rejection is maintained for the reasons of record.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose

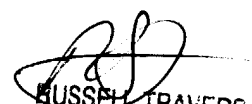
Art Unit: 1617

telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SS


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200